

## Message Text

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ACTION EB-07

INFO OCT-01 EA-06 ISO-00 AID-05 CIAE-00 COME-00 FRB-03

INR-07 NSAE-00 USIA-06 TRSE-00 XMB-02 OPIC-03 SP-02

CIEP-01 LAB-04 SIL-01 OMB-01 NSC-05 SS-15 STR-04

CEA-01 L-03 H-02 /079 W

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R 300425Z JUN 75

FM AMEMBASSY CANBERRA

TO SECSTATE WASHDC 6055

INFO AMCONSUL SYDNEY

AMCONSUL PERTH

AMCONSUL MELBOURNE

AMCONSUL BRISBANE

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EO 11652: N/A

TAGS: EINV, EALR, AS

SUBJ: FOREIGN INVESTMENT STUDY ACT OF 1974

REF: A. STATE 107242

B. CANBERRA A-127

C. CANBERRA 3308

D. CANBERRA 1621

E. PERTH 0061

F. CANBERRA A-026

G. CANBERRA A-239, DECEMBER 18, 1974

H. CANBERRA A-212, NOV 15, 1974

I. CANBERRA 7275, NOV. 6, 1974

J. CANBERRA 6351, SEPT. 27, 1974

K. CANBERRA 5476, AUG. 20, 1974

L. CANBERRA 5321, AUG. 14, 1974

M. CANBERRA 3669, JUNE 13, 1974

N. CANBERRA A-080, MAY 24, 1974

O. CANBERRA 3048, MAY 22, 1974

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P. CANBERRA 2786, MAY 9, 1974

Q. CANBERRA 0392, JAN 22, 1974  
R. CANBERRA 5894, OCT. 30, 1973  
S. CANBERRA A-390, DEC 22, 1972  
T. CANBERRA 5316, SEPT. 27, 1972

1. SUMMARY: TELEGRAM TRANSMITS MISSION RESPONSE TO QUERIES (REF A)  
ON GOA POLICY ON FDI TOGETHER WITH EXPLANATORY PREFACE.

2. PREFACE: TO OBTAIN BALANCED PICTURE FROM ANSWERS LISTED BELOW  
TO REF A QUERIES, IT IS NECESSARY TO BEAR IN MIND SEVERAL  
GENERAL OBSERVATIONS:

(1) BASIC, LONG RUN OBJECTIVE OF GOA POLICY ON IN-BOUND FOREIGN  
DIRECT INVESTMENT (FDI) IS TO INCREASE PERCENTAGE OF AUSTRALIAN  
(BOTH PRIVATE AND GOVERNMENTAL) OWNERSHIP AND CONTROL OF  
ENTIRE DOMESTIC ECONOMY;

(2) MANY KEY ASPECTS OF THIS POLICY, MOST NOTABLY THE EXACT  
PERCENTAGE ULTIMATELY TO BE ATTAINED (EXCEPT FOR CERTAIN ENERGY  
RESOURCES), SPECIFIC METHODS TO BE USED TO ATTAIN THIS PER-  
CENTAGE AND TIME-FRAME WITHIN WHICH IT IS TO BE ATTAINED,  
HAVE NEVER BEEN PRECISELY SPELLED OUT;

(3) EXCEPT FOR FINANCIAL INTERMEDIARIES (WHERE RESTRICTIONS ARE  
GENERALLY LONG-ESTABLISHED AND LESS CONTROVERSIAL), INDUSTRIES  
EXTRACTING AND PROCESSING LOCAL MINERALS (RATHER THAN MANUFACTUR-  
ING INDUSTRIES) HAVE BEEN MOST IMPORTANT TARGETS OF GOA'S  
FDI POLICY.

3. AS RESULT OF THESE AND OTHER FACTORS, GOA POLICY AS OUTLINED  
BELOW MAY APPEAR TO BE MORE RESTRICTIVE AND THE OBJECT OF MORE  
URGENT IMPLEMENTATION THAN HAS PROVEN TO BE THE CASE DE FACTO. IN  
PRACTICE, GOA HAS TENDED TO BE HIGHLY SELECTIVE IN PURSUING ITS  
GOAL IN PARTICULAR TRANSACTIONS. DELAYS IN SETTING-UP BUREAU-  
CRATIC MACHINERY AND PROCEDURES, LAGS IN ENACTING RELEVANT  
LEGISLATION AND RECURRENT MODIFICATIONS OF POLICY AS ECONOMIC  
CONDITIONS HAVE CHANGED HAVE RESULTED IN AN UNEVEN IMPACT OF THE  
POLICY ON VARIOUS SECTORS OF THE AUST. ECONOMY, WITH MINERALS  
INDUSTRY INVESTMENT BEING RESTRICTED MOST. FOR EXAMPLE, OUT OF  
670 FOREIGN TAKE-OVER PROPOSALS CONSIDERED, ONLY 19 HAVE BEEN  
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BLOCKED OUTRIGHT BY THE GOA (SEE PARA 4(E) BELOW). HOWEVER,  
REGARDING URANIUM, THE MOST SENSITIVE OF ALL INDUSTRIES IN THE  
GOVERNMENT'S VIEW, FOREIGN INVESTMENT HAS NOT BEEN ALLOWED TO  
INCREASE AT ALL SINCE 1972 AND, INDEED, FOREIGNERS WITH INTERESTS  
IN URANIUM PRE-DATING 1972 HAVE BEEN TOLD (REFS D,L AND R) THAT  
100 PERCENT LOCAL OWNERSHIP OF THAT INDUSTRY IS AN IMMUTABLE GOA  
OBJECTIVE (ALTHOUGH, TYPICALLY, MEANS OF ACHIEVING THAT OBJECTIVE  
AND DEADLINE FOR DOING SO REMAIN QUITE VAGUE).

4. ANSWERS TO TEN QUESTIONS IN REF A ARE ANSWERED BELOW IN ORDER POSED:

5. LAWS AND REGULATIONS:

(A) AS REFLECTED BY SELECTED LIST PROVIDED OF 19 REFERENCE TELEGRAMS AND AIRGRAMS FROM THE MISSION OVER LAST THREE YEARS, GOA'S GENERAL POLICY ON FDI HAS UNDERGONE SIGNIFICANT CHANGE AND ALMOST CONSTANT MODIFICATION SINCE PREVIOUS LIBERAL-COUNTRY GOVERNMENT INTRODUCED SCREENING OF FOREIGN TAKEOVER BIDS IN SEPT., 1972 (REF T). POLICY CHANGE WAS ACCELERATED BY ELECTION OF NEW LABOR GOA IN DEC., 1972, AND REINFORCED BY ITS REELECTION IN MAY, 1974. POLICY HAS THUS CHANGED FROM "OPEN DOOR" ATTITUDE, UNDER WHICH AUSTRALIA WAS ONE OF MOST RECEPTIVE NATIONS REGARDING FDI, TO PRESENT ATTITUDE OF ACCEPTING OVERSEAS INVESTMENT ONLY IN CASES WHERE GOA DECIDES SPECIFIC INVESTMENT PROPOSALS WILL SERVE THE "NATIONAL INTEREST". PRINCIPAL POLICY GOAL IS TO ALLOW NEW FDI ONLY WHEN RESULTANT "NET ECONOMIC BENEFIT" (IN TERMS OF EFFECTS ON COMPETITION, DOMESTIC PRODUCTIVE CAPACITY, TECHNOLOGICAL CHANGE, DEVELOPMENT OF NEW EXPORT MARKETS, PRODUCTION, QUALITY AND RANGE OF LOCAL PRODUCTS AND SERVICES, LEVELS OF PRICES AND EFFICIENCY, LOCAL PROCESSING OF DOMESTIC RAW MATERIALS, R AND D, IMPORT SUBSTITUTION, INDUSTRIAL RELATIONS, DECENTRALIZATION, ENVIRONMENTAL PROTECTION, ETC.) IS DEEMED TO OUTWEIGH PRESUMPTIVE NEGATIVE FACTOR OF RESULTANT DIMINUTION OF LOCAL OWNERSHIP AND CONTROL OF DOMESTIC INDUSTRY AND RESOURCES.

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(B) THREE LAWS NOW PROVIDE STATUTORY AUTHORITY FOR GOA'S FOREIGN INVESTMENT POLICY: (1) COMPANIES (FOREIGN TAKE-OVERS) ACT 1972-1974 (REF T) "INTERIM" LEGISLATION ENACTED BY PREVIOUS GOA AND TWICE EXTENDED BY PRESENT GOA WHICH PROVIDES FOR SCREENING OF TAKEOVER BIDS, (2) BANKING ACT 1959-74, WHICH, INTER ALIA, ESTABLISHES RESERVE BANK AUTHORITY TO APPROVE OR DISAPPROVE ALL FOREIGN EXCHANGE ACCOMMODATIONS; AND (3) BANKS (SHAREHOLDINGS) ACT 1972 (REF N) WHICH, INTER ALIA, RESTRICTS MAXIMUM INDIVIDUAL HOLDINGS BY AUSTRALIANS AND FOREIGNERS IN LOCAL BANKS. ON MAY 22, 1975, GOA INTRODUCED FOREIGN TAKEOVERS BILL 1975 (REFS B AND C) WHICH WOULD SUPERSEDE "INTERIM" TAKEOVERS LAW (1) AND ESTABLISH BROADER STATUTORY AUTHORITY FOR GOA EXAMINATION OF PROPOSED TRANSACTIONS. COPIES OF THREE ACTS AND PROPOSED BILL BEING AIR POUCHED. IN ADDITION TO STATUTORY AUTHORITY, THE GOA CITES "POLICY MEASURES" (OFFICIAL STATEMENTS BY CABINET MINISTERS OF GOVERNMENT POLICY) AS AUTHORITY FOR CERTAIN DECISIONS WHERE SPECIFIC LEGISLATIVE AUTHORITY DOES NOT EXIST (REF B AND PREVIOUS). AN IMPORTANT EXAMPLE OF "POLICY MEASURES" IS PRIME MINISTER WHITLAM'S GUIDELINES FOR FOREIGN INVESTMENT IN MINING ANNOUNCED IN LATE LIMITED OFFICIAL USE

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1974 (REFS H AND I) AND REITERATED IN MARCH, 1975 (REF D). GOA FREQUENTLY USES ITS EXCHANGE CONTROL AUTHORITY UNDER THE BANKING ACT TO GIVE EFFECT TO ITS "POLICY MEASURES". (C) GOA HAS SET UP TWO ADVISORY COMMITTEES WITHIN TREASURY TO EXAMINE FDI PROPOSALS AND MAKE RECOMMENDATIONS TO TREASURER, WHO MAKES FINAL DECISION ON WHETHER OR NOT TO ALLOW PROPOSED TRANSACTIONS TO PROCEED. COMMITTEE ON FOREIGN TAKEOVERS (COFT) IS RESTRICTED TO CONSIDERING TAKEOVER BIDS; FOREIGN INVESTMENT COMMITTEE (FIC) (REF M) EXAMINES OTHER PROPOSED FDI TRANSACTIONS. THESE PROCEDURES ARE APPLIED ON A NON-DISCRIMINATORY BASIS REGARDLESS OF NATIONALITY OF FOREIGN INTERESTS INVOLVED. TAKEOVERS ARE DEEMED TO INCLUDE TRANSACTIONS WHICH WOULD INVOLVE (REF B): (1) A FOREIGN PERSON, EITHER ALONE OR TOGETHER WITH ASSOCIATES, ACQUIRING OF INCREASING AN INTEREST OF 15 PERCENT OR MORE IN THE OWNERSHIP OR VOTING POWER OF A CORPORATION; OR (2) TWO OR MORE FOREIGN PERSONS, EITHER ALONE OR TOGETHER WITH ASSOCIATES, ACQUIRING OR INCREASING AN AGGREGATE INTEREST OF 40 PERCENT OR MORE IN THE OWNERSHIP OR VOTING POWER OF A CORPORATION. ALTHOUGH NO MINIMUM IS ESTABLISHED FOR PROPOSED TRANSACTIONS EXAMINABLE BY COFT, IN PRACTICE GOA DOES NOT INTERVENE WHERE TOTAL ASSETS OF A\$1 (APPROXIMATELY US\$1.35) MILLION ARE INVOLVED, EXCEPT IN "SPECIAL

CIRCUMSTANCES". SITUATION REGARDING FIC IS LESS CLEARLY DOCUMENTED. OFFICIAL STATEMENTS IMPLY THAT EVERY DOLLAR OF NEW FOREIGN INVESTMENT FROM OVERSEAS NOT INVOLVING TAKEOVER, MUST BE EXAMINED BY FIC. HOWEVER, AUTHORITATIVE SOURCE CONFIDES THAT, IN FACT, UNPUBLICIZED RULE OF THUMB (WHICH USG SHOULD NOT ALLUDE TO PUBLICLY) ALLOWS RESERVE BANK TO APPROVE EXCHANGE ACCOMMODATION WITHOUT REFERRAL TO FIC FOR NEW ANNUAL INFLOWS OF FOREIGN INVESTMENT OF UP TO A\$250,000 (APPROXIMATELY US\$337,500) UNLESS INVESTMENT WOULD BE IN A "POLITICALLY SENSITIVE" SECTOR (E.G. ENERGY, MINERALS, AUTOS, REAL ESTATE, ETC.). MOREOVER, UNLIKE COFT, FIC HAS NO OFFICIALLY SPECIFIED YARDSTICK FOR DETERMINING WHETHER INVESTOR IS "FOREIGN". IN PRESENT AD HOC SITUATION, FIC IS EXAMINING SOME SENSITIVE SECTOR PROPOSALS INVOLVING INTERESTS WHICH WOULD NOT BE CONSIDERED "FOREIGN" BY COFT'S 15-40 PERCENT TAKEOVER GUIDELINE EXPLAINED ABOVE. TREASURY OFFICIALS HOPE TO CLARIFY DEFINITION OF "FOREIGN" IN NEAR FUTURE.

(D) AS EXPLAINED ABOVE, DISTINCTION IS MADE BETWEEN TAKEOVER BIDS AND NEW FDI PROPOSALS. IN MAY 2, 1974 ELECTION SPEECH IN PERTH (REF P), PRIME MINISTER SAID SCREENING MACHINERY WOULD BE LIMITED OFFICIAL USE

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EXTENDED TO COVER ALL TYPES OF FDI, REGARDLESS OF WHETHER FUNDS ARE ALREADY "IN-COUNTRY" OR NOT OR WHETHER INVESTMENT INVOLVED EXPANSION OF EXISTING PRODUCTION OR ENTRY INTO NEW PRODUCT/SERVICE FIELD. THIS EXTENSION HAS NOT YET BEEN ENACTED INTO LAW, SO THAT TREASURY STILL LACKS LEGISLATIVE JURISDICTION OVER PROPOSED INVESTMENT OF "IN-COUNTRY" FUNDS OWNED BY FOREIGNERS. HOWEVER, FIC WILL PASS JUDGMENT ON PROPOSALS INVOLVING SUCH FUNDS WHICH ARE VOLUNTARILY SUBMITTED TO IT.

(E) GOA DECLINES TO RELEASE INFORMATION ON FOREIGN INVESTMENT APPLICATIONS WHICH IT HAS REFUSED. HOWEVER, EMBASSY HAS LEARNED FROM AUTHORITATIVE SOURCE THAT COFT HAS EXAMINED 670 PROPOSED TRANSACTIONS THROUGH MAY 31, 1975. OF THESE, ONLY 19 PROPOSALS WERE "STOPPED OUTRIGHT" BY GOA ACTION, PRESUMABLY BY REFUSAL OF EXCHANGE ACCOMMODATION. ANOTHER 28 CASES WERE "WITHDRAWN" AFTER EXAMINATION, GIVING A TOTAL OF 47 PROPOSALS (ROUGHLY 7 PERCENT OF ALL TRANSACTIONS CONSIDERED) WHICH HAVE NOT PROCEEDED. OF THE REMAINING 623 PROPOSALS, SOME OF WHICH WERE "MODIFIED" AS A RESULT OF THE EXAMINATION PROCESS, GOA HAD "NO OBJECTIONS" TO 280, AND ANOTHER 343 WERE ALLOWED TO PROCEED ON THE BASIS THAT GOA HAD NO AUTHORITY TO ACT AGAINST THEM. (HOWEVER, THIS DOES NOT INDICATE THAT GOA WOULD OTHERWISE HAVE BLOCKED ALL 343.) OBVIOUSLY, OTHER POSSIBLE TAKEOVER PROPOSALS MAY HAVE BEEN DISCOURAGED BY VERY EXISTENCE OF COFT EVEN THOUGH THE COMMITTEE NEVER FORMALLY EXAMINED THEM. NO INFORMATION IS AVAILABLE ON INVESTMENT PROPOSALS BLOCKED AS A RESULT OF FIC RECOMMENDATIONS, BUT NUMBER OF SUCH CASES IS REPORTEDLY VERY SMALL.

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(F) AS INDICATED ABOVE, SCREENING PROCESS BY COFT OR FIC TAKES INTO ACCOUNT INDUSTRY INVOLVED, GEOGRAPHICAL AREAS OF PROPOSED SITES, ETC., BUT THERE ARE NO "INCENTIVES" AS SUCH. GOA AND STATE GOVERNMENTS HAVE VARIOUS "DECENTRALIZATION" INCENTIVES TO ATTRACT INDUSTRY OUTSIDE MAIN URBAN AREAS, BUT THESE ARE AVAILABLE TO LOCAL AND FOREIGN INVESTMENT ALIKE.

(G) SHORTLY AFTER ITS ELECTION IN 1972, THE LABOR GOA ANNOUNCED A "BUY AUSTRALIA" POLICY (REF S) UNDER WHICH "AUSTRALIAN-OWNED" (NEVER-DEFINED) FIRMS WOULD ENJOY PREFERENCE IN SUPPLYING FEDERAL GOVERNMENT. ASIDE FROM HEADLINES GENERATED AT THE TIME, THIS POLICY SEEMS TO HAVE BEEN STILL-BORN. EMBASSY KNOWS OF NO CASES WHERE GOA CONTRACTS HAVE BEEN AWARDED TO LOCAL COMPANIES SOLELY ON BASIS OF LOCAL OWNERSHIP. HOWEVER, IT SHOULD BE NOTED THAT LOCALLY-OWNED FIRMS ARE RARELY IN A POSITION TO OFFER EXACT SAME PRODUCT, SERVICE, PRICE, DELIVERY, ETC. AS FOREIGN-OWNED COMPANIES. IN SUCH A HYPOTHETICAL SITUATION, GOA MIGHT WELL GIVE PREFERENCE TO LOCALLY-OWNED FIRM. IN ANY EVENT, WE KNOW OF NO INSTANCES WHERE NEW FDI HAS BEEN DETERRED BY SUCH A POLICY

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OBJECTIVE.

6. INFORMATION GATHERING.

(H) PROPRIETARY INFORMATION GIVE TO COFT OR FIC IS CLASSIFIED "LIMITED ACCESS ONLY" BY TREASURY, AND UNAUTHORIZED DISSEMINATION OR PUBLICATION OF SUCH INFORMATION IS SUBJECT TO PROSECUTION UNDER CRIMES ACT.

7. OPEC INVESTMENTS

(I) AS PREVIOUSLY REPORTED (REFS E, J AND K), THERE IS NO REASON TO BELIEVE GOA WOULD TREAT FDI PROPOSALS FROM OPEC NATION ANY DIFFERENTLY THAN OTHER POSSIBLE FOREIGN INVESTMENT. DESPITE PRESS SPECULATION, 1974 VISIT OF SHAH OF IRAN, AND SEVERAL VISITS OF GOA OFFICIALS TO MIDDLE EAST (EVIDENTLY MOTIVATED BY DESIRE FOR TRADE AND LOAN FUNDS), OPEC DIRECT INVESTMENT IN AUSTRALIA HAS SO FAR FAILED TO MATERIALIZE. REPORTEDLY, KUWAITIS ARE NEGOTIATING TO INVEST IN WEST AUSTRALIAN CATTLE STATION AND IRANIANS ARE INTERESTED IN INVESTMENT IN W.A. BAUXITE INDUSTRY TO OBTAIN ALUMINA FOR THEIR OWN SMELTERS, BUT NOTHING CONCRETE HAS YET EMERGED.

(J) GOA HAS GIVEN NO INDICATION THAT IT IS CONTEMPLATING CHANGES IN ITS POLICIES TOWARD FDI AS RESULT OF ANY ATTEMPT BY AN OPEC COUNTRY TO INVEST LOCALLY.  
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## Message Attributes

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